

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
Conservation Law Foundation, Inc.	)	
	)	Case No. _____
Plaintiff,	)	
	)	<b>COMPLAINT FOR</b>
	)	<b>DECLARATORY AND INJUNCTIVE</b>
v.	)	<b>RELIEF AND CIVIL PENALTIES</b>
	)	
John J. Jalbert d/b/a	)	
Methuen Motor Mart Co.	)	
	)	(Federal Water Pollution Control Act,
Defendant.	)	33 U.S.C. §§ 1251 to 1387)
_____	)	

Plaintiff Conservation Law Foundation, Inc., (“CLF”) by and through its counsel, hereby alleges:

**INTRODUCTION**

1. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq. (the “Clean Water Act,” “the Act,” or “CWA”). Plaintiff seeks declaratory judgment, injunctive relief, and other relief the Court deems appropriate to correct the Defendant’s violations of the Clean Water Act, which include continuous and ongoing unauthorized discharges of polluted stormwater runoff from Defendant John J. Jalbert’s (doing business as Methuen Motor Mart Co.) automobile salvage yard facility located at 469 Merrimack Street, Methuen, MA 01844 into waters of the United States and failure to comply with the EPA Multi-

Sector General Permit for Stormwater Discharges Associated With Industrial Activity (“MSGP” or “Multi-Sector General Permit”).

2. The Merrimack River (Waterbody ID MA84A-04) is within the Merrimack watershed and flows from the Essex Dam in Lawrence to confluence with the Little River in Haverhill, ultimately discharging into the Atlantic Ocean. The Merrimack watershed is home to aquatic life, plants, and animal species that rely on the Merrimack River, its tributaries, and adjacent wetlands for their survival.

3. The Clean Water Act requires that states establish minimum water quality criteria and standards to protect human health and aquatic life. CWA §§ 303–304, 33 U.S.C. §§ 1313–1314.

4. The Merrimack River is categorized as a Category 5 Waterbody, indicating that it is impaired for one or more uses and requires a TMDL. Under the Massachusetts Surface Water Quality law, the Merrimack River where it flows past Defendant’s automobile salvage yard facility is a Class B Waterbody “designated as a habitat for fish, other aquatic life, and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation.” and “shall have consistently good aesthetic value.”

5. The Merrimack River does not meet these standards and the Environmental Protection Agency (“EPA”) has designated Merrimack River as impaired pursuant to Section 303(d) of the Act for failure to meet minimum water quality standards for pollutants including polychlorinated biphenyls (PCBs), nutrients and pathogens.

6. The Massachusetts Surface Water Quality Standards establish minimum standards for a variety of pollutants, including but not limited to dissolved oxygen, temperature,

pathogens (bacteria), solids, oil and grease, color and turbidity, taste and odor, nutrients, aesthetics, radioactivity, and toxic pollutants. 314 Mass. Code Regs. 4.05.

7. Stormwater runoff is one of the major sources of contamination of the Merrimack River and its tributaries.

8. Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt.

9. Defendant John J. Jalbert, doing business as, Methuen Motor Mart Co. (hereinafter “Defendant” or “Methuen Motor Mart”), engages in industrial activities such as vehicle dismantling and processing; used parts storage; outdoor vehicle and equipment storage; vehicle and equipment maintenance; vehicle, equipment, and parts washing; liquid storage, and vehicle traffic in and out of the Facility. As precipitation comes into contact with pollutants generated by these activities, it picks up the pollutants and is conveyed to the Merrimack River.

### **JURISDICTION AND VENUE**

10. This is a civil suit brought under the citizen suit enforcement provisions of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* (the “Clean Water Act” or the “CWA”). This Court has subject matter jurisdiction over the parties and this action pursuant to Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1) and 28 U.S.C. § 1331 (an action arising under the Constitution and laws of the United States).

11. Plaintiff has complied with the statutory notice requirements under Section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2.

12. On June 11, 2013, Plaintiff provided Methuen Motor Mart with notice of its intention to file suit for violations of the Clean Water Act by sending a 60-day notice letter (“Notice Letter”) via certified mail to John J. Jalbert, doing business as Methuen Motor Mart Co., regarding Defendant’s violations of the Clean Water Act. 33 U.S.C. § 1365(a)(1); 40 C.F.R. § 135.2(a)(1).

13. A copy of the Notice Letter was sent to the Administrator of the United States Environmental Protection Agency (“EPA”), the Administrator of EPA Region I, and the Commissioner of the Massachusetts Department of Environmental Protection (“MassDEP”) pursuant to the CWA, 33 U.S.C. § 1365(b)(1)(A) and 40 C.F.R. § 135.2(a)(1).

14. A true and correct copy of Plaintiff’s Notice Letter is attached as Attachment A to this Complaint and is incorporated here by reference.

15. More than sixty days have passed since the Notice Letter was served on Defendant.

16. Neither the EPA nor the Commonwealth of Massachusetts has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. 33 U.S.C. § 1365(b)(1)(B).

17. Venue is proper in the District Court of Massachusetts pursuant to Section 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

## **PARTIES**

18. Plaintiff CLF is a not-for-profit corporation incorporated under the laws of the Commonwealth of Massachusetts and with a principal place of business at 62 Summer Street, Boston, MA, 02110.

19. CLF's mission includes the conservation and protection of the many uses of the waters in and around the Merrimack watershed for, among other things, fishing, recreation, boating, scenic and aesthetic enjoyment, and scientific purposes. To further these goals, CLF actively seeks federal and state agency implementation of the Clean Water Act and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

20. Members of CLF live on or near the Merrimack River and its tributaries, and use and enjoy the Merrimack watershed for recreational, aesthetic, and scientific purposes.

21. Discharges of pollutants by Defendant adversely affect CLF members' use and enjoyment of the Merrimack watershed.

22. The interests of CLF's members have been, are being, and will continue to be adversely affected by Defendant's failure to comply with the Clean Water Act and the MSGP. The relief sought will redress the harms to Plaintiff by Defendant's activities. Continuing commission of the acts and omissions alleged above have and will continue to irreparably harm Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

23. Defendant is an unincorporated business registered under the laws of the Commonwealth of Massachusetts.

24. Defendant operates an automobile salvage yard facility at 469 Merrimack Street, Methuen MA 01844 (the “Facility”). The Facility has a multiple entry and exit points for vehicles on Merrimack Street, multiple structures, and interior roads running between and around the outdoor, uncovered storage areas for junked cars.

25. The Facility slopes to the Merrimack River and has approximately 365 feet of frontage on the Merrimack River which slopes steeply down to the water’s edge. An aerial image of Defendant’s Facility showing its proximity to the Merrimack River is attached hereto as Attachment B.

26. John J. Jalbert is the owner and operator of Methuen Motor Mart Co.

27. Defendant maintains, operates, and is responsible for industrial activities at the Facility.

## **STATUTORY BACKGROUND**

### **The Clean Water Act**

28. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States from a “point source,” unless the discharge complies with various enumerated sections of the Act. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a valid National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

29. “Point source” is defined broadly under § 502(14) of the Clean Water Act to include, “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock,

concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

30. Congress amended the Clean Water Act in 1987 to require that certain industrial facilities obtain stormwater discharge permits. Water Quality Act of 1987, Pub. L. No. 100-4, § 405, 101 Stat 7 (1987); see 55 Fed. Reg. 47990, 47991-93 (Nov. 16, 1990).

31. Section 402 of the Clean Water Act requires that NPDES permits be issued for stormwater discharges associated with industrial activities. CWA §§ 402(a)(1), 402(p)(2), 402(p)(3)(A), 402(p)(4), 402(p)(6); 33 U.S.C. §§ 1342(a)(1), 1342(p)(2), 1342(p)(3)(A), 1342(p)(4), 1342(p)(6).

32. EPA regulations set forth at 40 C.F.R. § 122.26 required industrial dischargers to submit applications for permit coverage no later than October 1, 1992. In September 1995, EPA issued a NPDES Storm Water Multi-Sector General Permit for Industrial Activities (“1995 MSGP”). EPA re-issued the MSGP on October 30, 2000 (“2000 MSGP”), 65 Fed. Reg. 64746. EPA again re-issued the MSGP on September 29, 2008 (“2008 MSGP”), requiring all covered facilities to file a notice of intent (“NOI”) for coverage under the 2008 permit by January 5, 2009. 73 Fed. Reg. 56572; 2008 MSGP, Table 1-2.

33. In establishing these regulations, EPA cited abundant data showing the harmful effects of stormwater runoff on rivers, streams, and coastal areas across the nation. In particular, EPA found that runoff from industrial facilities contained elevated pollution levels. 55 Fed. Reg. 47990, 47991 (Nov. 16, 1990).

34. EPA has not delegated authority to the Commonwealth of Massachusetts to implement a NPDES permitting program under the Clean Water Act. Therefore, EPA is the NPDES permitting authority in Massachusetts.

35. The Multi-Sector General Permit is issued by EPA pursuant to Sections 402(a) and 402(p) of the Clean Water Act and regulates stormwater discharges from industrial facilities. 33 U.S.C. §§ 1342(a), 1342(p). In order to discharge stormwater lawfully, industrial dischargers must obtain coverage under the MSGP and comply with its terms.

36. Industrial dischargers are required to file a complete and accurate Notice of Intent (“NOI”) to be covered by the MSGP.

37. Industrial dischargers must also develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”) prior to filing an NOI. The SWPPP must identify and evaluate sources of pollutants associated with industrial discharges from the facility, and identify and implement effective Best Management Practices (“BMPs”) to control pollutants in stormwater discharges in a manner that achieves the substantive requirements of the permit.

38. Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), provides for citizen enforcement actions against any “person” who is alleged to be in violation of an “effluent standard or limitation . . . or an order issued by the Administrator or a State with respect to such a standard or limitation.”

39. Such enforcement action under Clean Water Act Section 505(a) includes an action seeking remedies for unauthorized discharge under Section 301 of the CWA, 33 U.S.C § 1311, as well as for violation of a permit condition under Section 402 of the CWA, 33 U.S.C. § 1342, and Section 505(f) of the CWA, 33 U.S.C. § 1365(f).



40. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1–19.4.

### **FACTS**

41. Upon information and belief, Defendant has operated and continues to operate an automobile salvage yard facility at 469 Merrimack Street, Methuen MA 01844 since at least 2012.

42. Upon information and belief, stormwater from the Facility has discharged and continues to discharge into the Merrimack River.

43. The primary activity at the Facility falls under Standard Industrial Classification (“SIC”) Code 5015, the listed codes in Appendix D of the MSGP, and/or the activities listed in 40 C.F.R. § 122.26(b)(14).

44. Upon information and belief, Defendant has engaged and continues to engage in the following industrial operations at the Facility: vehicle dismantling and processing, used parts storage; outdoor vehicle and equipment storage; vehicle and equipment maintenance; vehicle, equipment, and parts washing; sales and shipping, and liquid storage.

45. Upon information and belief, the sources of pollutants associated with the industrial activities at the Facility include: vehicle dismantling, processing, and storage areas; shipping and receiving areas; oil-stained dirt and pavement; vehicles entering and

exiting the Facility; liquid storage areas; junked cars and car parts; and on-site material handling equipment such as backhoes.

46. Upon information and belief, pollutants present in stormwater discharged from the Facility include, but are not limited to: oil and grease; ethylene glycol; toxic and heavy metals; mercury; sulfuric acid; galvanized metals; aluminum; petroleum hydrocarbons; suspended solids; arsenic; organics; chlorinated solvents; acid/alkaline wastes; phosphorous; salts; antifreeze, transmission and brake fluids; nutrients; pathogens; trash; hydraulic fluids; acids and solvents; sediment and total suspended solids; pH-affecting substances; fugitive and other dust, dirt, and debris, and elevated temperature.

47. The vehicle dismantling, processing, and storage areas; shipping and receiving areas; oil-stained dirt and pavement; liquid storage areas; junked cars and car parts; and on-site material handling equipment at the Facility are uncovered, and therefore exposed to precipitation.

48. Upon information and belief, materials associated with industrial activities that are exposed to the elements at the Facility, include, but are not limited to: oil, anti-freeze, batteries, gasoline, diesel fuel, hydraulic fluids, electrical switches, batteries, chrome bumpers, wheel balance weights, tires, rims, filters, radiators, catalytic converters, engine blocks, hub caps, doors, drivelines, galvanized metals, mufflers, leaking engines, chipping/corroding bumpers, chipping paint, galvanized metal, greasy rags, oil filters, air filters, batteries, hydraulic fluids, transmission fluids, radiator fluids, degreasers, electric motors, lead, AC compressors, auto radiators, condensers, motor parts, heat exchangers,

zinc, wire, cable, nickel alloys, junk cars, automotive engines, tire rims, and tanks contaminated with industrial pollutants. These materials contain or are contaminated with the pollutants listed at Paragraph 46 above.

49. Defendant has operated and continues to operate trucks and other vehicles that enter and exit the Facility via driveways or access roads.

50. Upon information and belief, the vehicles referenced in Paragraph 49, above, transport pollutants including, but not limited to: hydrocarbons (oil, grease, fuel), metals, total suspended solids, sediment, road salt (which in turn contains chlorides, sodium, and impurities), onto and off of the Facility and into the waters of the United States.

51. During every measurable precipitation event and every instance of snowmelt, water flows onto and over exposed materials and accumulated pollutants at the Facility, generating stormwater runoff.

52. Stormwater runoff from the Facility is contaminated with pollutants from the industrial materials and activities at the Facility.

53. Upon information and belief, stormwater runoff from the Facility is collected, channeled, and conveyed via site grading, ditches, swales, berms, erosion channels, the operation of gravity, direct hydrological connections through the ground, and other conveyances into the Merrimack River.

54. Upon information and belief, stormwater runoff from the Facility is not treated to remove the pollutants referenced at Paragraphs 46 and 50, above, before it is discharged into the Merrimack River.

55. EPA considers precipitation above 0.1 inches during a 24-hour period a measurable precipitation event. 40 C.F.R. § 122.26(c)(i)(E)(6).

56. Upon information and belief, a measurable precipitation event is sufficient to generate runoff from the Facility.

57. The MSGP specifically references snowmelt as a form of stormwater discharge that must be addressed by a discharger in its control measures. MSGP Part 2.1.2.1.

58. Upon information and belief, Defendant has discharged and continues to discharge stormwater containing pollutants from the activities at the Facility via site grading, ditches, swales, berms, the operation of gravity, direct hydrological connections through the ground, and other conveyances into the Merrimack River.

59. The Merrimack River flows into the Atlantic Ocean, both of which are “waters of the United States,” as defined in 40 C.F.R. § 122.2, and therefore, “navigable waters,” as defined in 33 U.S.C. § 1362(7).

60. Massachusetts’ Impaired Waters List identifies the Merrimack River as an impaired water pursuant to Section 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d).

61. Defendant has not met and continues to fail to meet the requirements to obtain authorization to discharge stormwater under the Multi-Sector General Permit or another valid NPDES permit for the Facility.

62. Defendant has not posted a complete and accurate Stormwater Pollution Prevention Plan on the Internet for the Facility.

63. Upon information and belief, Defendant has failed to install and implement control measures to meet numeric and non-numeric effluent limitations in Part 2.1 of the MSGP at the Facility.

64. Defendant has failed to develop and implement a complete and accurate SWPPP that meets the requirements of MSGP Part 5, before submitting an NOI for permit coverage for the Facility.

65. Defendant has not filed a complete and accurate NOI with EPA.

66. Defendant is not authorized to discharge from the Facility under the MSGP until all requirements of MSGP Part 1.3 have been fulfilled and sixty days has passed since the EPA posts the NOI. MSGP Part 1.3, Table 1-2.

### **CLAIMS FOR RELIEF**

#### **First Cause of Action: Failure to Obtain and Comply with a Permit for Industrial Discharges**

67. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

68. Defendant is an industrial discharger with the primary industrial activity at its Facility falling under a SIC Code of 5015 or another activity listed under Appendix D of the 2008 MSGP or 40 C.F.R. § 122.26(b)(14).

69. Defendant is required to obtain permit coverage for its Facility and comply with the MSGP pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

70. Defendant has failed and continues to fail to obtain permit coverage and comply with the MSGP pursuant to Section 402 of the CWA, 33 U.S.C. § 1342 for its Facility.

71. Each and every day since at least October 1, 1992, on which Defendant has not obtained permit coverage for its Facility and complied fully with the MSGP is a separate and distinct violation of Section 402 of the CWA, 33 U.S.C. § 1342.

**Second Cause of Action: Unauthorized Discharge of Pollutants Into Waters of the United States**

72. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

73. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from any point source to waters of the United States, except for discharges in compliance with a NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

74. In order to be authorized to discharge lawfully under the MSGP, a facility must meet requirements set forth in Part 1.3.1 of the MSGP. These include:

- (a) meeting the eligibility requirements in Part 1.1 of the MSGP;
- (b) selecting, designing, installing, and implementing control measures in accordance with MSGP Part 2.1;
- (c) developing a complete and accurate SWPPP according to MSGP Part 5; and
- (d) filing a complete and accurate NOI to seek coverage under the MSGP.

75. Defendant is an industrial discharger with a primary SIC Code of 5015 and/or another activity listed under Appendix D of the MSGP or 40 C.F.R. § 122.26(b)(14), which means Defendant is obligated to apply for coverage under the MSGP or other legal authorization for its Facility.

76. Defendant's industrial activities at the Facility have resulted and continue to result in "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) into Merrimack River and downstream waters on every day of precipitation greater than 0.1 inches and every instance of snowmelt.

77. Defendant's discharges of stormwater associated with industrial activity ("industrial stormwater discharges") at the Facility are discharges of pollutants within the meaning of 33 U.S.C. § 1362(12).

78. Defendant's industrial stormwater discharges at the Facility are point source discharges into waters of the United States.

79. Stormwater discharges at the Facility have caused and continue to cause discharges of pollutants to waters of the United States in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

80. Defendant has discharged and continues to discharge industrial stormwater without meeting the authorization requirements to be covered under a valid NPDES permit as required by CWA Section 301(a), 33 U.S.C. § 1311(a), and Section 402(p)(2)(B) of the CWA, 33 U.S.C. § 1342(p)(2)(B).

81. Defendant has discharged and continues to discharge pollutants to an impaired waterbody from the Facility.

82. Each and every day since at least October 1, 1992, on which Defendant has discharged and continues to discharge industrial stormwater from the Facility without authorization under a valid NPDES permit constitutes a distinct violation of CWA Section 301(a), 33 U.S.C. § 1311(a) and Section 402 of the CWA, 33 U.S.C. § 1342.

**Third Cause of Action: Failure to Submit to EPA a Complete Notice of Intent to be Covered under the MSGP in Violation of the MSGP and the Clean Water Act (Violations of MSGP Part 1.3.1)**

83. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

84. Industrial dischargers are required to submit to EPA a complete and accurate NOI to be covered under the MSGP pursuant to MSGP Part 1.3.1.

85. Defendant has failed and continues to fail to submit to EPA a complete and accurate NOI to be covered under the MSGP pursuant to MSGP Part 1.3.1 for the Facility.

86. Defendant has failed and continues to fail to develop and implement a complete and accurate SWPPP meeting the requirements of MSGP Part 5 before submitting an NOI for coverage for the Facility.

87. No SWPPP is posted on EPA's website as of August 13, 2013.

88. Each and every day on which Defendant has operated the Facility without having filed a complete and accurate NOI for the Facility is a separate and distinct violation of Section 301(a), 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C. § 1342.

**Fourth Cause of Action: Failure to Develop and Implement a SWPPP in Violation of the MSGP and the Clean Water Act (Violations of MSGP Part 5)**

89. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

90. Industrial dischargers are required to develop and implement a complete and accurate Stormwater Pollution Prevention Plan and to retain a copy of the SWPPP at the facility at all times together with all other required inspection, monitoring, and certification records that demonstrate full compliance with the Permit, pursuant to MSGP Part 5.

91. Defendant has failed and continues to fail to develop and implement a complete and accurate SWPPP prior to submitting an NOI for coverage for its Facility.



92. Defendant's ongoing failure to develop and implement a complete and accurate SWPPP for its Facility is evidenced by, *inter alia*, the outdoor uncovered storage of industrial materials, including waste materials, without appropriate Best Management Practices; the continued exposure of significant quantities of industrial material to precipitation and snowmelt; the failure to either treat stormwater prior to discharge or to implement effective containment practices; and the continued discharge of stormwater pollutants.

93. Defendant has failed and continues to fail to retain copies of a complete and accurate SWPPP and all other required documentation at the Facility at all times, pursuant to MSGP Part 5.4.

94. Each and every day on which Defendant has operated the Facility and failed to develop and fully implement a complete and accurate SWPPP for the Facility and to keep such SWPPP on file at the Facility together with all other required documentation, is a separate and distinct violation of Section 301(a), 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C. § 1342.

**Fifth Cause of Action: Failure to Take Control Measures and Meet Water Quality-Based Effluent Limitations in Violation of the MSGP and the Clean Water Act (Violations of MSGP Part 2)**

95. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

96. Industrial dischargers are required to take control measures and meet water quality-based effluent limitations pursuant to MSGP Part 2.

97. Industrial dischargers must "minimize" exposure of manufacturing, processing, and material storage areas to precipitation, snowmelt, and runoff meaning "reduce and/or

eliminate” such exposures “to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice,” pursuant to MSGP Part 2.

98. The control measures must meet the Best Practicable Control Technology/Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (“BPT/BAT/BCT”) standard and must comply with all non-numeric effluent limits set forth in Part 2.1.2 of the MSGP, including requirements for good housekeeping, maintenance, spill prevention and response, erosion and sediment control, salt storage, employee training, prevention of discharge of waste, garbage, and floatable debris to receiving waters, eliminating non-stormwater discharges, and dust generation and vehicle tracking of industrial materials. MSGP Part 2.1.2.

99. The control measures must divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff, to minimize pollutants in the Facility’s discharges. MSGP Part 2.1.2.6.

100. Industrial dischargers must select, design, install, and implement the control measures in accordance with good engineering practices and manufacturer’s specifications. MSGP Part 2.1. The control measures must be modified if the facility finds that it is not achieving the effect of minimizing pollutant discharges. MSGP Part 2.1.

101. Defendant’s Facility has operated and continues to operate in a manner that exposes industrial materials to precipitation without implementing BMPs that achieve the BPT/BAT/BCT standard and comply with all non-numeric effluent limitations.

102. Each and every day since at least October 1, 1992, on which Defendant has operated and continues to operate the Facility without implementing BMPs at the Facility that achieve the BPT/BAT/BCT standard, and comply with all non-numeric effluent limitations pursuant to MSGP Part 2.1, is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C. § 1342.

103. Discharges from the Facility must be controlled as necessary to meet applicable water quality standards. MSGP Part 2.2.1.

104. Defendant's Facility has discharged and continues to discharge pollutants listed at Paragraphs 46 and 50, above, into the Merrimack River and downstream waters.

105. The discharges from Defendant's Facility are not controlled as necessary to meet applicable water quality standards.

106. Each and every day on which Defendant has operated the Facility and failed to implement control measures and meet water-quality based effluent limitations at the Facility in violation of the MSGP is a separate and distinct violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a) and Section 402 of the CWA, 33 U.S.C. § 1342.

**Sixth Cause of Action: Failure to Conduct Facility Inspections in Violation of the MSGP and the Clean Water Act (Violations of MSGP Part 4)**

107. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

108. Industrial dischargers are required to conduct and document routine facility inspections pursuant to MSGP Part 4.1, in no cases less frequently than once per quarter.

109. Defendant has failed and continues to fail to conduct comprehensive routine facility inspections at its Facility, pursuant to MSGP Part 4.1.

110. Each and every day on which Defendant has operated and continues to operate without conducting routine facility inspections at the Facility, pursuant to MSGP Part 4.1, is a separate and distinct violation of the MSGP and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C. § 1342.

111. Industrial dischargers are required to collect a wet-weather stormwater sample from each outfall at the facility once each quarter throughout the permit term, to assess such sample for the presence of indicators of stormwater pollution, and to retain documentation of such visual assessments, pursuant to MSGP Part 4.2.

112. Defendant has failed and continues to fail to collect a wet-weather stormwater samples from each outfall at its Facility, to inspect the samples for indicators of pollution at its Facility, and to document such assessment for its Facility, pursuant to MSGP Part 4.2.

113. Each and every day on which Defendant has operated and continues to operate the Facility without conducting required wet-weather sampling and visual assessment and retaining documentation pursuant to MSGP Part 4.2 is a separate and distinct violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C. § 1342.

114. Industrial dischargers are required to conduct annual comprehensive site inspections, to document such annual inspections, and to submit the results of such inspections to EPA, pursuant to MSGP Part 4.3.

115. Defendant has failed and continues to fail to conduct and document such comprehensive site inspections for its Facility and to submit the results of such inspections to EPA for its Facility, pursuant to MSGP Part 4.3.

116. Each and every day on which Defendant has operated and continues to operate its Facility without conducting and documenting the required comprehensive site inspection and submitting such documentation to EPA pursuant to MSGP Part 4.3 is a separate and distinct violation of Section 301(a) , 33 U.S.C. § 1311(a), and Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

**Seventh Cause of Action: Failure to Comply with the Required Monitoring and Sampling Procedures in Violation of the MSGP and the Clean Water Act.  
(Violations of MSGP Part 6)**

117. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

118. Industrial dischargers are required to comply with the required monitoring and sampling procedures pursuant to MSGP Part 6.

119. Defendant has failed and continues to fail to comply with the required benchmark monitoring and sampling procedures for its Facility, pursuant to MSGP Part 6.2.1. As a result, Defendant has also failed to take any required review of control measures, additional monitoring, and corrective actions that would have been triggered by benchmark monitoring at its Facility.

120. Each and every day on which Defendant has operated and continues to operate its Facility without complying with the required

benchmark monitoring and sampling procedures pursuant to MSGP Part 6 is a separate and distinct violation of the MSGP and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), and Section 402 of the CWA, 33 U.S.C. § 1342.

121. Defendant has failed and continues to fail to comply with the required impaired waters monitoring pursuant to MSGP Part 6.2.4 for its Facility.

122. Each and every day on which Defendant has failed and continues to fail to comply with the required impaired waters monitoring for its Facility, pursuant to MSGP Part 6.2.4, is a separate and distinct violation of the MSGP and Section 301(a), 33 U.S.C. § 1311, and Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

**Eighth Cause of Action: Failure to Carry Out the Required Reporting and  
Recordkeeping in Violation of the MSGP and the Clean Water Act  
(Violations of MSGP Part 7)**

123. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

124. Industrial dischargers are required to carry out the required reporting and recordkeeping pursuant to MSGP Part 7.

125. Reporting and recordkeeping requirements under MSGP Part 7 include:

- (a) Reporting monitoring data to EPA pursuant to MSGP Part 7.1;
- (b) Preparing and submitting an annual report containing specified information to EPA, pursuant to MSGP Part 7.2;
- (c) Submitting an exceedance report to EPA if follow-up monitoring after a benchmark exceedance exceeds a numeric effluent limit, pursuant to MSGP Part 7.3;

- (d) Completing additional reporting and submitting such reports to the appropriate EPA office, including: reporting of any noncompliance within the specified time period; notifying EPA as soon as the facility has knowledge of a leak, spill, or other release containing oil or a hazardous substance in a reportable quantity; notifying EPA of certain planned changes to the facility; submitting a complete and accurate NOI in the event of transfer of ownership and operation; and correcting or supplementing facts in the facility's NOI or any other report, pursuant to MSGP Part 7.4; and
- (e) Retaining copies of the SWPPP including any modifications, along with additional documentation required under Part 5.4, all reports and certifications required by the permit, monitoring data, and records of data used to complete the NOI, for a period of at least three years from the date on which permit coverage expires or is terminated. MSGP Part 7.5.

126. Defendant has failed and continues to fail to carry out the required reporting and recordkeeping pursuant to MSGP Part 7 for its Facility.

127. Each and every day on which Defendant has operated and continues to operate its Facility without carrying out the required reporting and recordkeeping for its Facility pursuant to MSGP Part 7, is a separate and distinct violation of the MSGP and Section 301(a), 33 U.S.C. § 1311(a), and Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

**Ninth Cause of Action: Failure to Comply with Sector-Specific Requirements in Violation of the MSGP and the Clean Water Act (Violations of MSGP Part 8)**

128. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

129. Defendant engages in automobile recycling activities falling under Part 8, Sector M of the MSGP at its Facility. MSGP Part 8.M.1–8.M.5. Therefore, the Facility must comply with the sector-specific requirements associated with these activities.

130. Sector M requirements include:

- (a) Drain all vehicles intended to be dismantled of all fluids upon arrival at the site (or as soon thereafter as feasible) or employ an alternative method to prevent spills and leaks (Part 8.M.2.1)
- (b) Conduct employee training regarding proper handling of oil, used mineral spirits, anti-freeze, mercury switches, and solvents (Part 8.M.2.2).
- (c) Manage runoff from the facility. Specifically, the facility must consider the use of practices such as berms, detention ponds, and filtering devices such as oil water separators (Part 8.M.2.3).
- (d) Identify locations on a drainage site map that are used for dismantling, storage, and maintenance of used motor vehicle parts, and identifying where specified activities may be exposed to precipitation or surface runoff (including dismantling areas, auto parts storage areas, and liquid storage tanks and drums for fuel and other fluids) (Part 8.M.3.1).
- (e) Assess the potential for vehicle storage areas, dismantling areas, parts storage areas, and fueling stations, to contribute pollutants to stormwater discharges. (Part 8.M.3.2).
- (f) Inspect vehicles arriving on site for leaks and inspecting quarterly for signs of leakage of all equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches. Inspecting quarterly for signs of leakage



all vessels and areas where hazardous materials and general automotive fluids are stored, including, but not limited to, mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze. (Part 8.M.4).

(g) Utilize sector-specific benchmarks for Total Suspended Solids, aluminum, iron, and lead in conducting monitoring under Section 6 of the MSGP (Part 8.M.5).

131. Defendant has failed, and continues to fail to comply with the sector-specific requirements listed in Paragraph 130, above, pursuant to Part 8 Subpart M of the MSGP, at the Facility.

132. Each and every day on which Defendant has operated and continues to operate the Facility without carrying out required sector-specific activities pursuant to MSGP Part 8, Subpart M is a separate and distinct violation of the MSGP and Section 301(a), 33 U.S.C. § 1311(a), and Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

133. Defendant's violations of the Clean Water Act at the Facility are on-going and continuous, are capable of repetition, and result from the same underlying and inadequately resolved causes.

#### **RELIEF REQUESTED**

134. Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

(a) Declare Defendant to have violated and to be in violation of Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), for its unlawful and unauthorized discharges of pollutants at the Facility;

- (b) Declare Defendant to have violated and to be in violation of Section 402 of the Clean Water Act, 33 U.S.C. § 1342, for its failure to seek coverage under the Multi-Sector General Permit and failure to comply with all applicable requirements of the MSGP for the Facility;
- (c) Enjoin Defendant from discharging pollutants from the Facility and into the surface waters surrounding and downstream from the Facility except as authorized by and in compliance with a National Pollutant Discharge Elimination Permit;
- (d) Order Defendant to comply fully and immediately with all applicable requirements of the Multi-Sector General Permit for the Facility;
- (e) Order Defendant to pay civil penalties of \$32,500 per day per violation for all violations occurring after March 15, 2004, and \$37,500 per day per violation for all violations occurring after January 12, 2009, for each violation of the Clean Water Act at the Facility pursuant to Sections 309(d) and 505(a) of the CWA, 33 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 –19.4;
- (f) Order Defendant to take appropriate actions to restore the quality of the waters impaired by its discharges from the Facility and to remedy harm to the surrounding ecosystems and communities affected by Defendant's noncompliance with the Clean Water Act;
- (g) Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as permitted by Section 505(d) of the CWA, 33 U.S.C. § 1365(d); and

- (h) Award any such other and further relief as this Court may deem appropriate.

Respectfully submitted,

Conservation Law Foundation, Inc.

By its attorney:

/s/ Zachary K. Griefen

Zachary K. Griefen, BBO# 665521  
Conservation Law Foundation  
15 East State Street, Suite 4  
Montpelier, VT 05602  
(802) 223-5992 x4011  
zgriefen@clf.org

Dated: August 14, 2013